

No. 9(1)81-6Lab./15076.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Kalkaji Engineering Works, Plot No. 278, Sector 24, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 383 of 1980

between

SHRI JHINKU PRASAD, WORKMAN AND THE RESPONDENT-MANAGEMENT
OF M/S KALKAJI ENGINEERING WORKS, PLOT NO. 278,
SECTOR 24, FARIDABAD

Shri Yoginder Singh, for the workman.

Shri H. R. Dua, for the respondent-management.

AWARD

This reference No. 383 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/84-80/43421, dated 7th August, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between the workman Shri Jhinku Prasad, and the respondent-management of M/s Kalkaji Engineering Works, Plot No. 278, Sector 24, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Jhinku Prasad was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were issued to the parties. The parties appeared and filed their pleadings. According to the claim statement, the case of the workman is that he joined the factory on 10th May, 1979 as a helper at Rs. 150 p.m. As the workman was not getting minimum wages as fixed by the Government of Haryana and was constantly demanding the same from the respondent-management, the respondent stopped the workman at the gate on 10th November, 1979 without any prior notice or payment in lieu of notice period. The workman made a complaint before the Labour Officer but the respondent did not appear on so many dates and then appeared and taken the plea that the workman is employee of the contractor. The termination is illegal and the workman claimant is entitled for the re-instatement with full back wages and continuity of service.

According to the written statement of the respondent, there is no relationship of employer and employee between the parties and when the workman was not employee of the respondent then there is no question of compensation of back wages. The respondent had never engaged the workman so the question of termination does not arise. So the applicant is not entitled to any relief.

On the pleadings of the parties, the following issues are framed :—

- (1) Whether the relationship of employer and employee exist between the workman and the respondent?
- (2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

(3) Relief ?

There is order that issue No. 1 be treated as preliminary issue, but both the parties led their own evidences on all the issues. So my findings on the issues is as under :—

Issue No. 1 :

Issue No. 1 is for the relationship between the parties ? On this issue, representative of the respondent argued that the respondent had never employed the workman according to the record of the respondent produced in the Court. The respondent had produced the Wages Register, the Attendance Register and E.S.I. Register in the Court which bear no such name as the claimant. So there is no proof of employment of the claimant with the respondent and the claimant never worked in the respondent factory. He might have worked as contractor's labour which is not in the record of the respondent. The workman has produced one certificate Exhibit W-2 signed by Shri Ram Kishan, partner, which is false and fabricated one. There is no Ram Kishan partner in the factory as stated by the witness MW-1, Shri Sunder Dass, partners of the factory. There are two partners in the factory. One is Shri Thakur Dass and other is Sunder Dass. So there is no such partner as Ram Kishan in the factory. The certificate produced by the workman is false, fabricated and no concern with the factory. The witness has also stated in his statement that in the year 1979 there was contractor working in the factory and the claimant might have been working as contractor's labour. So there is no relationship of employer and employee between the parties. He further argued that the claimant had admitted in his statement that there was no cut of Provident Fund and E.S.I. from his wages and he has given no proof of an employee of the factory. The workman has admitted in his statement that he used to get the salary on vouchers and there are other 10 to 15 persons, who get the salary on the registers. So he might be labour of the contractor and not of the employee of the factory.

The representative of the workman argued that Exhibit W-2 is admittedly on the pad of the factory and certificate is issued to two persons Shri Jhinku Prasad and Shri Ram Chander and in this certificate the partner had written that these employees working in the factory from 4.00 p.m. to 12.30 p.m. due to power shortage. It is a genuine certificate issued by the partner of the factory. Though the witness MW-1, Shri Sunder Dass had denied that Ram Kishan is not partner of the factory, but he has admitted that Shri Ram Kishan is their cousin. The witness was directed to produce partnership deed of the firm in the court which the respondent has failed to produce in the court and conceal this fact. In fact Shri Ram Kishan is partner of the factory and they have concealed this fact by not producing the partnership deed in the court, even at the time of arguments. The witness MW-1 has also stated in his cross examination that I did not remember whether any Ram Chander was there in the factory or not. He has not denied the suggestion of the workman's representative directly. The witness has also not denied the signature of Ram Kishan on Ex. W-2 he has stated that he does not know whether these are the signature of Shri Ram Kishan or not. These all show that the documents is genuine, issued by the partner of the factory. When one partner came in the witness box and stated that Ram Kishan is not partner of the firm, he should have produced Shri Ram Kishan in the court to say that the same are his signature on Ex. W-2 which the respondent has withdrawn because of the fact that Shri Ram Kishan was the partner of the factory and he signed the document. If they produced Shri Ram Kishan in the Court everything would be cleared. So this concealment and withdrawal of the best evidence from the Court the presumption goes against the respondent and in favour of the workman that it is genuine document. The respondent had failed to rebutt and falsify the genuine document, which is the basis of the workman's case. It is the practice of the so many managements of the factory that they employ the workmen on a small wages for exploiting their poverty and when the workers demanded their full wages according to Government notification then they turned out them in the same way. So is the case with this workman. The respondent had taken the plea that the workman might be the employee of the contractor but the respondent

had not produced any contractor or any agreement of the contractor to show that he was the contractor's labour. This all shows that he was not the labour of the contractor, but of the employee of the respondent factory, and clears the whole issue.

After hearing the arguments of both the parties and going through the file I am of the view that the arguments put forward by the representative of the workman has some force and can be believed. The document Ex. W-2 is very clear in this respect and proves the relationship of employer and employee between the respondent and the workman and this issue is decided in favour of the workman and against the respondent.

Issue No. 2—

Issue No. 2 is as per reference. On this issue the representative of the respondent argued that according to claim statement and statement of the workman as WW-1, he came in the factory on 10th May, 1979 and terminated on 10th November, 1979 after six months which is denied according to the record and the statement of the partner of the firm. The Certificate Ex. W-2 mentions two names in it and one of them was Ram Chander with the claimant. The workman should have produced Shri Ram Chander as his witness to confirm that the claimant was the employee of the respondent which was not produced and Shri Ram Chander was the best witness for the workman to prove his case. He cited A.I.R. Supreme Court 1981 page 197, para 10, if the best evidence is not produced the presumption should be against the party. He further, argued that the workman had not adduced any evidence to prove that he was the employee of factory and that he was not employee of the contractor. So there is no question of termination as proper and justified. So the workman is not entitled to any relief.

The representative of the workman argued that he had argued on issue No. 1 that there is relationship between the parties and the respondent closed the gate of the workman on 10th November, 1979 when he demanded the wages according to Government notification. The factory are in the habit of exploiting of poorman's position, so they pay less wages and take more work and when any workman demanded full wages then he was turned out of the factory. The workman was not allowed to work in the factory and the workman made a complaint to the Labour Officer which is Ex. W-1 and the Labour Officer called the respondent so many times and respondent taken the plea that the claimant is not the employee of the factory. There are only 16 workers in the factory and when the Labour Officer asked the respondent to produce the list of all the workmen working in the factory even which are not shown in the registers then they supplied the list before the Labour Officer and said list includes the name of the claimant workman and that is why the Labour Officer sent the failure report to the Government for this reference. The respondent refused to make any statement before the Conciliation Officer, but they stated before the Conciliation Officer that the claimant was the employee of the contractor. The respondent had failed to produce any contractor or list thereof to prove this fact that the claimant was the employee of the contractor. The claimant was the employee of the respondent and the respondent terminated the services of the workman without giving any notice or any reason to remove his services. So the termination of the workman is illegal and the workman is entitled for reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that after deciding the issue No. 1 in favour of the workman, the workman is entitled for reinstatement with continuity of service and with full back wages. No order as to costs.

This be read in answer to this reference.

Dated ; the 12th December, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 3475, dated 18th December, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government of Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)81-6Lab./15077.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad/Labour Court, Faridabad/Rohtak in respect of the dispute between the workmen and the management of M/s Rama Hospital, Khandsa Road near Bhuteshwar Mandir, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 61 of 1981

Between

MISS SHAKUNTALA TUTEJA, LADY WORKMAN AND THE RESPONDENT
MANAGEMENT OF M/S RAMA HOSPITAL, KHANDSA ROAD, NEAR BHUTE-
SHWAR MANDIR, GURGAON

Present—

Shri S.P. Gupta for the workman.
Shri S.K. Goswami for the respondent management.

AWARD

This reference No. 61 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/56-80/6664, dated 4th February, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Miss Shakuntla Tuteja, lady workman and the respondent management of M/s. Rama Hospital, Khandsa Road, near Bhuteshwar Mandir, Gurgaon. The term of the reference was :—

Whether the termination of services of Miss Shakuntla Tuteja was justified and in or der? If not, to what relief is she entitled ?

After receiving this reference, the notices were issued to the parties who came present in the court and filed their pleadings. According to claim statement the case of the workman is that she joined the respondent employment from 1st January, 1975 and was terminated 10th December, 1979 without any reason. She was getting Rs. 300 as salary p.m. and she was working as Nurse. She had further stated in her rejoinder that the claimant was engaged by Smt. Dr. Rama while in the employment with her department from 1st January, 1975. She served her a nurse in her private practice and engaged as full time wages from 1st January, 1977 when she left her service and started her own practice. So the claimant is entitled for reinstatement with full back wages and continuity of service.

According to the written statement, the case of the respondent is that the claimant never worked since 1st January, 1975 the hospital came into existence from June, 1978 and the claimant was never kept as regular employee at a salary of Rs. 300 per month by the respondent. She has a casual and called whenever her services were required and paid as per cases and she herself stopped coming inspite of calling at the time of cases. The claimant has filed an application with other authorities and there is a great contradiction of date of appointment and date of termination. It shows the malafide intention of the workman and the claim is false and frivolous which kindly be dismissed.

On the pleadings of the parties, the following issues were framed :—

1. Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is she entitled ?
2. Relief ?

The claimant also filed one application in this court on 29th December, 1980 which was also pending before me and the reference and application were proceeded together. The representative of the respondent stated in the reference that he want to produce the documents and his all evidence in application and that may be read in the reference also and the documents and statements were recorded in the application No. 231 of 1980. It is done as the other party has no objection for the same. My findings on issues are as under :—

Issue No. 1:—

On this issue the representative of the respondent argued that the claimant has not produced any evidence except a certificate, Exhibit W-1 dated 15th June, 1979 from the doctor Hans Raj Ganda. The claimant was not a permanent and regular employee of the hospital which came into existence from June, 1978 as stated by M-W-1, Shri H.R. Ganda and MW-2, Shri Rajinder, Building Inspector, Municipal Committee, Gurgaon, who has stated that site plan of the hospital was given to the Municipal Committee on 12th April, 1978 as passed on 11th May, 1978 by the Committee and the respondent has produced the site plan, Exhibit MW 2/1 which prove that the hospital came into existence in June, 1978. It is admitted fact that Shri H.R. Ganda and Doctor Rama were in the Government service with the health department as stated by MW-1 the doctor himself in his statement and which is admitted by WW-1 that they were in the service from 1975 and they resigned from the service and started their practice in the year 1978. So the story of employment of this claimant is false and wrong. The claimant has alleged in her claim statement and rejoinder that Dr. Rama was used to do the private practice at her residence and the claimant started working with her from 1st January, 1975 is quite wrong because the Government and debarred the doctors for the private practice in the year in which the claimant claimed her employment, so it is quite wrong and false that she was in the employment of the respondent. Further argued that except the service certificate which was issued to the claimant by Dr. H.R. Ganda in good faith as she was working with them as casual basis and she requests for the same on the basis that she will get a good job after this certificate. The certificate was issued on good faith is exploited and the certificate did not show that she was in and regular employment of the hospital. Except this document she had not produced any documentary or oral evidence to prove this fact that she was a regular employee of the hospital. The claimant gave to the doctor an application for giving the part time job which is signed by the claimant and which, Exhibit M-4. The claimant has noted but this document in any way which shows that she was in the casual employment of the hospital. The doctor used to call her whenever any such case came to them and was got paid through the patient and not by the hospital. So she was not employee of the hospital in any respect. The claimant refused to come to give service to the hospital and gave in writing three letters mark B, C, D and signed them in which she has stated that she had received her full and final payment for the cases attended by her during April, 1979 and nothing is due against the hospital. and please did not call her in future for any service as her mother is not feeling well and she had shifted to Delhi and she had got a job there. These letters show that she stopped herself on coming on the job and she was not terminated by the hospital authorities. So there is no question of justified and proper termination. He further argued that she gave two demand notices, (i) Exhibit M-5 dated 1st August, 1980 in which she had stated before the Conciliation Officer that she was employed with the hospital from 1st December, 1977 and in her claim statement she had stated the date of joining the employment of the hospital as on 1st January, 1975. There is a great contradiction between the two and the claimant gave another demand notice dated 24th July, 1980 which is Exhibit M-6 where there is no date is given of her joining the service of the respondent. This contradiction creates doubt in the mind and which goes in favour of the respondent and not in favour of the workman. The hospital was started in the year June 1978 and the respondent had produced the

receipt of the X-ray plant and which was purchased in the year 1979. So the hospital was practically started in the year 1979, after starting it in the year 1978. The claimant has failed to prove that she was employed by the respondent from the year 1975 and she was on casual and part time working with the respondent on a case-wise payment and not a regular employee. When she had no proof that she was employed from the year 1975 or regular employed in the year 1977 then the reference is bad in law and may be dismissed.

The representative of the workman argued that the claimant was a nurse and she was employed by Dr. Rama while in the Civil Hospital, Gurgaon for her private practice. She used to do the private practice at her residence and the claimant used to attend and help the doctor in their cases, that was not a regular employment of the claimant but Dr. Genda got allotted two shops No. 2 and 3 in the year 1976 and started their hospital in those two shops. The certificate of allotment is Exhibit W-2. The one shop was allotted in the name of Dr. H.R. Ganda and the other shops was in the name of mother in law of the doctor Smt. Chetan Devi and they started their hospital in those shops and got constructed full fledge hospital adjacent to these two shops and after completing the hospital they shifted to that hospital. The respondent hospital in the year 1976 in the shops and the claimant was in the regular employment at the salary of Rs. 300 as a nurse with the respondent and remained in the service till her termination dated 10th December, 1979. The doctor issued certificate Exhibit W-1 dated 15th June, 1979 which is also admitted by Shri H.R. Ganda in his statement as MW-1. By this certificate it is clear that she was under their regular service for the last two years. The respondent used to pay their salary on the registers and there were 9 other members of the staff including the sweeper working in the hospital. All were working on regular basis. The respondent did not produce any hospital record to show the strength of the workers working in the hospital. They have withheld the record because it could prove the service of the claimant. The respondent refused about any regular employee in the hospital as there are no regular employee working in the hospital except the two partners Dr. H.R. Ganda and his wife Dr. Rama and one sweeper. The claimant has given the names of persons working in the hospital in her statement which were not contradicted by the respondent which shows that the same are working in the hospital. He further argued that the respondent had produced the letters of the claimant which are marked B, C, D are false and fabricated. These are typed letters and having the seal of the hospital which shows that the respondent got sign some paper and they got typed which ever they liked according to their own interest. When she was not a regular employee what was the need of got these writing from the claimant as she had received her full and final, which shows that these documents are false and fabricated and the claimant was the regular employee of the respondent and was terminated without any reason and notice. So she may be reinstated with full back wages.

After hearing the arguments and going through the file I am of the view that a doctor issuing a certificate had fully knowing what he is doing. If she was not a permanent employee, he should not have issued such certificate which clears that the claimant was working for the last two years. He had not mentioned in the certificate whether she was working on casual basis or on regular basis. But it is clear that she was working with the respondent. The letters mark B, C, D are very clear showing the attention of the respondent. The letters are typed and signatures are after a space of the type letters which also create doubts in the mind. She might not be working with the respondent from the year 1975. But it is clear that she was working with the respondent for the last 2 years and was terminated without giving any reason. So the orders of termination are not justified and proper and the claimant is entitled for her reinstatement with full back wages and continuity of service.

No order as to costs. This be read in answer to this reference.

Dated 13th December, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3476, dated 18th December, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)-81-6Lab./15080. - In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Faridabad in respect of the dispute between the workman and the management of M/s. The Sonapat Co-operative Sugar Mills, Ltd., Sonapat.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 374 of 1980

between

SHRI JAGDISH CHANDER, WORKMAN AND THE RESPONDENT MANAGEMENT
OF M/S. THE SONEPAT CO-OPERATIVE SUGAR MILLS, LIMITED, SONEPAT

Shri Ram Sarup Lakra for the workman.

Shri V.D. Sharma for the respondent management.

AWARD

This reference No. 374/80 has been referred to this Court by the Hon'ble Governor of Haryana, - *vide* his order No. ID/SPT/75/80/40207, dated 5th August, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Jagdish Chander, workman and the respondent management of M/s. The Sonapat Co-operative Sugar Mills, Limited Sonapat. The term of the reference was:-

Whether the termination of services of Shri Jagdish Chander was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were sent to the parties and they appeared and filed their pleadings. According to the demand notice and claim statement the case of the workman is that he was appointed as Boiler Asstt. on 26th November, 1976 on permanent post and was receiving Rs 379. The respondent gave a chargesheet on 13th April, 1979 on false allegations and domestic enquiry was held in which no opportunity was given to the workman and terminated illegally on 26th May, 1979. The enquiry officer did not hold the proper enquiry against the workman according to the rules and natural justice. So the termination order was illegal and not justified and the workman is entitled to reinstatement with full back wages and continuity of service.

According to the written statement of the respondent, the case of the respondent is that the services of the workman was terminated after conducting a proper enquiry and full opportunity was given to the workman in the domestic enquiry and after considering the enquiry report the authority has legally terminated the services of the workman according to law. So they have prayed for rejection of the reference.

On the pleadings of the parties, the following issues were framed :—

1. Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
2. Relief ?

My findings on issues are as under :—

Issue No. 1:

The representative of the respondent argued that the workman was appointed as Boiler Assistant on 26th November, 1976 on a permanent basis. The appointment letter is Ex. M-1, the workman was not found on duty on 7th April, 1979 by the Chief Engineer of the factory and he reported for some action to the respondent. The letter Ex. M-2 is the report of the Chief Engineer dated 7th April, 1979. After considering this report the Managing Director of the factory suspended the workman,—*vide* his order, dated 13th April, 1979 which is Ex. M-3 and called the explanation of the workman on 16th April, 1979 —*vide* Ex. M-4. The respondent appointed the enquiry officer Shri Dalip Singh on 18th April, 1979,—*vide* Ex. M-5 for the enquiry of the workman. The enquiry officer sent letter to the workman on 19th April, 1979 for conducting the enquiry on 24th April, 1979. The letter is Ex. M-6. The enquiry officer hold the enquiry against the workman on 24th April, 1979 and gave his report on the same day which is Ex. M-7. The respondent issued the show cause notice Ex. M-8 to the workman on 7th May, 1979 on the report of the enquiry officer dated 24th April, 1979. In the show cause notice it was made clear to the workman that on 7th April, 1979 when the Chief Engineer made a report that the workman was not working properly as boiler attendant and the concerned Chief Engineer was not satisfied with his work, again the workman was found absent from duty on 28th March, 1979 when the Managing Director visited the factory and he was marked absent. Again the Chief Engineer recommended for strick action on 12th April, 1979 against the workman due to his unsatisfactory work and conduct. After show cause notice the services of the workman were terminated,—*vide* his order dated 26th May, 1979 which Ex. M-9. The enquiry was proper and after the proper domestic enquiry and on the report of enquiry officer the termination order is valid and legal and there is nothing wrong in it and the orders are justified.

The representative of the workman argued that the workman was appointed on 26th November, 1976 as Boiler Attendant on a permanent job and was drawing Rs 379 and the workman was working properly well with the satisfaction of the respondent. The Chief Engineer of the factory used to take the home work from the workman and the workman did not want to work at his residence of the Chief Engineer, so he was annoyed and made a report on 7th April, 1979. There was no complaint against the workman from 26th November, 1976 to 7th April, 1979 in a long period of three years. When there was no complaint against the workman for such a long period and there was no explanation called by the respondent for any fault of the workman for this period. The respondent had decided to terminate the services of the workman on the complaint of the Chief Engineer, who had some annoyance with the workman. The complaint against the workman Ex. M-2 did not specifically allege any such allegation on the workman if the workman was absent on any day. The respondent should have asked the explanation of the workman for his absence. There may be so many reasons of a person of being absent for one day. But there is no such explanation was called by the respondent for his absence and only for this reason the workman was suspended on 13th April, 1979 without calling the explanation of the workman. The explanation of the workman was called on 16th April, 1979 by the Managing Director which Ex. M-4 which is illegal because the explanation should be called before the suspension of a workman. The workman was suspended on 13th April, 1979 and he was called the explanation on 16th April, 1979 which shows how the respondent work for the conspiracy against the workman. The enquiry officer was appointed on 18th April, 1979 and the

Enquiry Officer issued a letter on 19th April, 1979 to hold the enquiry on 24th April, 1979. The enquiry officer held the enquiry on 24th April, 1979 and gave his report on the same day. It shows how hastily the respondent tried to terminate the services of the workman without giving full opportunity to the workman. He further argued that the workman was not given any list of witnesses or any documents against him. He was simply called for the enquiry and the enquiry officer wrote the enquiry report without any proceedings written for the enquiry. The enquiry proceedings were not submitted in the court shows that there were no enquiry proceedings held by the enquiry officer and the enquiry report shows nothing except he has written that the charges are proved against the workman. The respondent has not submitted the reply filed by the workman in respect of the chargesheet given by the respondent. The enquiry officer has not given any opportunity to the workman to give his defence or his own statement. So the enquiry was defective in the eye of law and natural justice. The respondent should have filed the enquiry proceedings in the court to show that the domestic enquiry was proper and justified in the eye of law. The respondent has produced only few documents which are discussed above which is not a fully enquiry even before the court. They have not called the Enquiry Officer to give his statement before this court and to prove the proper enquiry as there was no proper enquiry the respondent has not pressed the issue for the proper domestic enquiry. If the enquiry officer comes in the witness box he can be asked certain questions about the enquiry to justify his enquiry proceedings but the respondent has withheld that witness knowingly, so the enquiry was not an enquiry at all and the workman was terminated about some annoyance and the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file I am of the view that the respondent has failed to conduct the fair and proper enquiry against the workman. There is no document before me showing that the opportunity was given to the workman. The report made against the workman on 7th April, 1979 and enquiry was finished on 24th April, 1979 within 15 days. There is no proper chargesheet was issued to the workman and there is no reply of the workman on the file to show what plea the workman had taken in the reply. There is no document on the file showing the fault of the workman to prove his fault, the workman was not given any opportunity in the domestic enquiry and the enquiry was not fair and proper and the orders based on such an enquiry are not justified and proper and the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read an answer to this reference.

Dated the 16th December, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

Endorsement No. 3482, dated 18th December, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.